IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 181 OF 1996

Sanjay Pundlik Parkar ..... ..... ....Appellant.

(Orig.Accd.No.1)
V/s

The State of Maharashtra ..... .... Respondents.

Mr.S. V. Marwadi, Adv. for the appellant.

Mr.A. S. Shitole, APP for the State.

**CORAM: V.G. PALSHIKAR**
AND
**R.C. CHAVAN, JJ.**

8th August, 2005.

**ORAL JUDGMENT: (Per Palshikar, J.)**

Being aggrieved by the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Sawantwadi, in Sessions Case No.3 of 1991 on 28.2.1996 the appellant-accused has preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned Advocate for the appellants as also the learned Public Prosecutor we have scrutinized the entire evidence on and reappreciated the same.

3. The prosecution case stated briefly is that the deceased Jayashree was resident of village Talgaon and on 20.3.1990 her dead body was found in the jungle around the village near the path going towards water tank. The body was noticed by accused No.1 who is husband of the victim and First Information Report came to be lodged on the basis of this information. Police first registered accident case and carried out the panchnama. During the course of investigation they suspected the accused to have committed murder and therefore he was charge sheeted and prosecuted.

4. The entire evidence led by the prosecution consists of two witnesses. P.W.1-Raghunath Sawant is the panch witness who was called by the police for the panchnama in panchayat office at village Talgaon. At that time accused No.4 was in custody of the police. He has deposed that the accused did not inform them anything. He was supposed to be panch for recovery of axe. But he turned hostile and he was so declared hostile. P.W.2-Shashikant Rane is the head constable who was working in Malvan police station at the time when the offence occurred. On 19.3.1990 he was attached to Deogad police station when he was informed by Balkrishna Dalvi that Sanjay Parkar the accused had gone to his shop for stitching shirt which had some blood stains and that is the entire evidence. Doctor is not examined to prove homicidal death. There is no other evidence connecting the accused to the crime. Except for certain exhibits there is nothing on record to come to the conclusion that there was any link between the accused and the crime.

5. However the learned trial Judge laying very heavy emphasis on section 294 of Criminal Procedure Code proceeded to observe that all the documents

produced in the Court by the prosecution were admitted by the accused under section 294 of Criminal Procedure Code and therefore they are bound to be held as proved and have been exhibited. This for the learned Judge was right. He goes further and observes that the contents are also true and have been admitted by the accused. What is provided by section 294 (3) is that where a document is admitted such document may be read in evidence in any trial without proof of the signature of the person to whom it purports to have signed it. All that has been provided by section is that all the documents admitted by the accused are admitted to have been made by the persons who the documents show as makers thereof. That a panchnama or post mortem report as alleged by the prosecution was factually made is held proved by recourse of section 294. The contents thereof are assumed to be true by the learned trial Judge. We need not go into the aspect of whether contents are required to be held true on admission under section 294 of Criminal Procedure Code and assume that the contents are also proved and true.

6. The documents which were admitted by the learned trial Judge under section 294 were following:

Exh.51-FIR dt.19.3.90, Ex.52-Inquest Panchnama dt.19.3.90, Ex.53-Spot panchnama, Ex.54-Death Certificate,Ex.55-panchnama of seizure of clothes on the person of the deceased, Ex.56-Seizure panchnama of shirt belonging to the accused, Ex.57-Seizure panchnama of Chappal of accused Sanjay recovered at the instance of accused, Ex.58-Panchnama of police search dog being used and pointing out to accused Sanjay, Ex.59-Panchnama

of accused Sanjay showing the way to scene of offence, Ex.60-Seizure panchnama of clothes of Dyaneshwar, Ex.61-Seizure panchnama of shirt belonging to accused Suresh, Ex.62-Injury report of accused Sanjay, Ex.63-Post mortem report, Ex.64-Letter of receipt of 8 sealed parcels by Forensic Laboratory, Ex.65-Panchnama of arrest of accused Sanjay disclosing injury on his person, Ex.66-Arrest panchnama of accused Dnyaneshwar, Ex.67-Arrest panchnama of accused Suresh, Ex.68-Arrest panchnama of accused Sulochana, Ex.69-Search panchnama of the house of Vasant Mistry, Ex.70-Letter addressed to Forensic Laboratory for examination of viscera, Ex.71-Seeking permission to correct the labels on muddemal property, Ex.72-Requisition for examination of search, Ex.73-Requisition for examination of blood stains on articles seized, Ex.74-Requisition for making map and Ex.75-Requisition for analysis of the clothes of the accused for blood stains.

7. We will consider each exhibit to examine whether these proved documents establish any link between the deceased, offence and the accused. Ex.51 is the FIR dated 19.3.1990. The FIR does not mention any name. What is proved by FIR is such a dead body as mentioned in the FIR was recovered and that it was dead because of some assault. It no where connects the accused to the dead body found and reported in Ex.51. Ex.52 is the inquest panchnama of that dead body. This panchnama also nowhere mentions name of any accused. What is proved by Ex.52 is that the dead body was found and inquest panchnama was made. Both the documents therefore do not in any manner connect the accused to the crime.

8. Ex.53 is the spot panchnama which describes the spot where body was

found. It no where mentions the accused and consequently it does not prove anything except the fact that the body was found at the spot mentioned in Ex.53. That the dead body was found is proved by Ex.53 and that death was caused by violence is proved by Ex.54. These documents also do not in any manner connect the accused to the death.

9. Ex.55 is seizure of clothes on the person of the deceased. That such seizure took place is proved but it does not in any manner connect accused to the crime. Similar is the case of Ex.56 which is seizure panchnama of shirt belonging to the accused. It mentions some faint stains on the shirt which were not analysed and therefore cannot in any manner connect the accused. Ex.57 is seizure panchnama of chappal. Recovery of chappal at the instance of accused does not in any manner prove commission of crime by the accused. Ex.58 is report of police search dog, taking the search and sniffing at the accused. That in itself cannot be conclusive proof that the accused was the person who caused the death of the victim.

10. Ex.59 is the panchnama which mentions that the accused showed the way to the scene of offence. The dead body was noticed by the accused. He complained about it. It was near the way to water tank and that in itself does not in any manner incriminate the accused. Ex.60 pertains to seizure of clothes of Dnyaneshwar-accused No.2 who has been acquitted. Ex.61 pertains to seizure of shirt belonging to accused Suresh who is acquitted. Ex.62 is the injury report. Ex.64 is the letter by which eight sealed parcels were transmitted to the forensic laboratory. The transmission is proved but the report of the analysis by forensic laboratory is indeterminate. It does not

say anything. It cannot therefore connect the accused to the crime. Ex.65 is the arrest panchnama of the accused-appellant. The fact he was arrested is undisputed. Merely because he is arrested it cannot be meant that he is the person. Exs. 66, 67 and 68 pertain to arrest of accused persons who are acquitted. Ex.69 is the search panchnama of the house of accused No.4. Search did not result in anything. Therefore it proves nothing. Ex.70 is letter addressed to forensic laboratory for examination of viscera. What happened to that examination is not on record. Therefore Ex.70 does not in any manner connect the accused to the crime. Ex.71 seeks permission to correct the muddemal property which means that the labels on the muddemal property were incorrect. On such incorrect labeling no reliance can be placed. Even if it is assumed that it was so, nothing is proved by Ex.71. Ex.72 is wholly inconsequential. Ex.73 is requisition for examination of blood stains articles seized. The report is not on record. Ex.74 is requisition for map. Map is not on record. Ex.75 is requisition for analysis of clothes of the accused for blood stains. Report is not on record. None of these documents shed any light whatsoever as to who were the persons who killed the victim. In our opinion, the learned trial Judge completely misdirected himself in convicting the accused No.1 and by acquitting accused Nos.2, 3 and 4 only. There is absolutely no evidence on record which 'connects the homicidal death of the victim. The learned Judge erred in convicting the accused in such circumstances. There is no alternate but to set aside the order of conviction and sentence. In the result therefore the appeal succeeds and is allowed. The impugned order of conviction and sentence is set aside. The

appellant-accused is already on bail. His bail bonds are cancelled.